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Supreme Court, U.S.

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CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1990

No.

RICHARD R. STENCLIK and DOLORES STENCLIK,
Petitioners

- v -

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Respondent

PETITION FOR WRIT OF CERTIORARI FROM
A JUDGMENT OF THE UNITED STATES COURT
OF APPEALS SECOND CIRCUIT.

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Questions Presented

1. Had the statute of limitations run when the statutory notice of deficiency was issued by the Internal Revenue Service?
2. Does an indefinite extension of time to assess a tax by use of Internal Revenue form 872-A expire by operation of law where there has been unreasonable and unjust delay and an unreasonable length of time has elapsed in issuing a statutory notice of deficiency?
3. Was there any substantive change in the rule or regulations for entering into and terminating an indefinite extension of time using form 872-A which would obviate prior law?

4. Does the law relating to construction of agreements apply to a written agreement between a taxpayer and the Commissioner of Internal Revenue under Section 5601 (c) (4) of the Internal Revenue Code?

5. Can the doctrine of equitable estoppel and laches be applied to the acts of the Internal Revenue Service based upon the facts of the case?

6. Can the Court disregard the acts or determination of the Internal Revenue Service when such have been arbitrary and capricious?

7. Is the Ruling in MOSER -v- UNITED STATES applicable to the facts in this case?

It is the duty of the State to protect the rights of its citizens and to maintain the peace and order of the community. The State is responsible for the welfare of its people and for the preservation of its resources. The State is also responsible for the education of its citizens and for the promotion of the arts and sciences.

The State is also responsible for the protection of the environment and for the conservation of the natural resources. The State is also responsible for the promotion of the health and safety of its citizens. The State is also responsible for the promotion of the economic development of the community.

The State is also responsible for the promotion of the social and cultural development of the community. The State is also responsible for the promotion of the international relations of the community. The State is also responsible for the promotion of the peace and order of the world.

The State is also responsible for the promotion of the welfare of its citizens and for the preservation of its resources. The State is also responsible for the education of its citizens and for the promotion of the arts and sciences.

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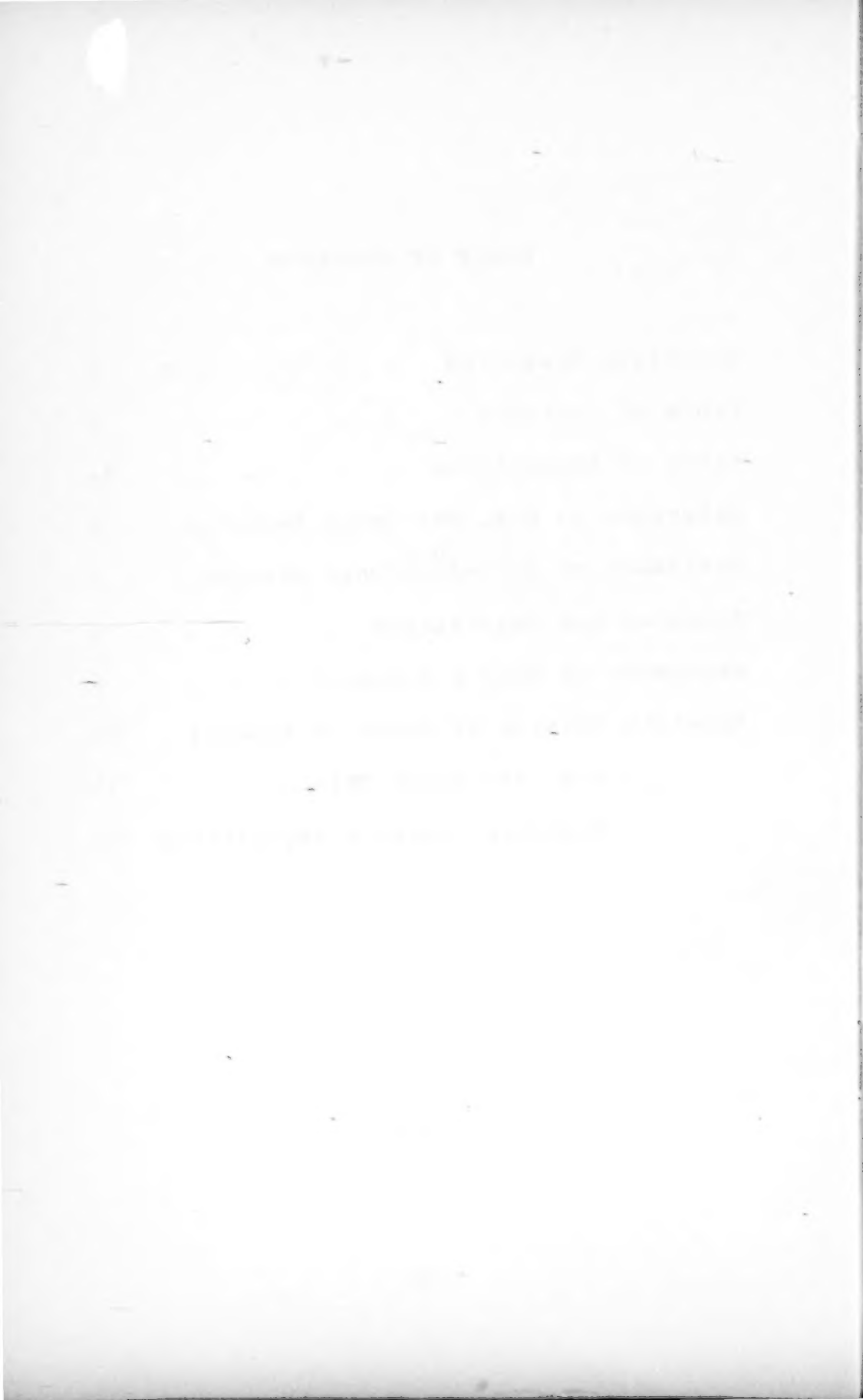


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The United States Tax Court rendered its order and decision in this case RICHARD STENCLIK and DOLORES STENCLIK Docket No. 24719-88 in a Memorandum Opinion in T.C. Memo 1989-516 and 58 T.C.M. (CCH) 205 (1989

The jurisdiction of the Court is invoked under Title 28 USCA Section 1254 (1) and Supreme Court Rule 13 (1) for a review of a judgment of a United States Court of Appeals, which affirmed an Order. and Decision of the United States Tax Court.

The statutes and regulations involved in this case are the following: -

Internal Revenue Code Section 6501 (a) which provides for a three year statute of limitation for assessment of income taxes and Section 6501 (4) which provides for

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extension of that period by an agreement in writing between the taxpayer and the Commissioner.

Internal Revenue Procedures 57-6 and 79-22 Sec.2.01 & Sec.2.03, which provide for expeditious issuance of notices of deficiency.

Income Tax Regulations 301-6501 (c)-1-(d) which provides for extension of the time to assess tax under Internal Revenue Code 5401, by written agreement only.

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Statement of the Case

A motion for summary judgment was made by Petitioners and by the Respondent, pursuant to Rule 121 of the United States Tax Court's Rules of Practice and Procedure upon the issue whether Section 5601 (a) of the Internal Revenue Code barred the issuance of a statutory notice of deficiency of income tax due by Petitioners for calendar year 1980, because of the unreasonable delay after execution by Petitioners and Respondent of a form 872-A, an indefinite extension of time to assess a tax due, and in addition by reason of the application of the equitable doctrines of estoppel and laches.

The motions were submitted, without oral argument upon the moving papers and the parties stipulation and joint exhibits. There was no dispute as to the facts presented to the lower Court.

The Tax Court ruled that as a matter of law form 872-A does not expire by operation of law after a reasonable time and denied Petitioners' motion and granted Respondent's motion for summary judgment.

Petitioners appeal from the Order and Decision thereon, entered November 1, 1989, which determined that there was a tax deficiency in Petitioners' Federal Income Tax for the taxable year 1980 and from each and every part of that Order and Decision.

The Petitioners respectfully submit that the Court may by operation of law, rule that an indefinite extension of time to assess a tax has expired because of unreasonable delay in failing to act for a period of over three years until June of 1988 after all the factual information required had been obtained and an audit had been completed in May of 1985, where no activity took place in that lapse of over three years; and where taxpayers in no shape or manner hindered, delayed, or adjourned any proceedings before the Internal Revenue Service, or requested any information, conferences or settlement negotiations, and in no way generated any activity or situation requiring the Internal Revenue Service to take additional time to issue a statutory notice of deficiency.

The Petitioners do not argue in the instant case that the Internal Revenue Service took an unreasonable length of time to complete its audit, or that termination by operation of law could likely occur during that phase, but limits their claim to the period subsequent to completion of the audit report in May, 1985 through June of 1988.

Unreasonable Delay

During May of 1985 respondent had all the audit information it needed. There was no activity on the file after that for over three years. No reasons are offered by Respondent for this undue delay. Petitioners in no way generated any activity which conceivably would cause delay chargeable to Petitioners.



In McMANUS -v-COMMISSIONER, 583 F 2nd 443 (9th Cir) 1978, the Court expressly stated at page 450 as follows in referring to form 872-A: -

"This form does not as the taxpayer contends, extend the limitation period forever. The Tax Court Held the waiver would be accepted and be operative for a reasonable time only. The taxpayers do not contend that the assessments here, filed 11 months after the three year period, were unreasonable delayed, nor could they prevail on such a contention."

In PICTORIAL PRINTING CO., INC. -v-COMMISSIONER, 38 F 2nd 563 (7th Cir) 1930, the Court held a delay of 2 years and 3 months to be unreasonable, affirming the general rule that an indefinite waiver is effective for a reasonable time only. The Court stated at page 565, "At no time did appellant make any protest in regard to the merits of the alleged 1916 deficiency,

and no controversy was pending respecting that year's tax whereby delay was occasioned. Under these circumstances, we cannot agree to the conclusion that unreasonable delay in making the determination does not appear from this record; but, on the contrary, from what is shown we conclude that the delay was decidedly unreasonable."

Revenue Procedure 57-6 spoke of factors "beyond the control of the service." Superseding Revenue Procedure 71-11, spoke of expediting the process and Superseding Revenue Procedure 79-22 expressly states in Sec. 2.01

"...service practice also contemplates that the period of any extension obtained shall be

required for consideration and processing of such cases." and in .03 "...to provide a means of restricting the period of limitation to the minimum time required for Service consideration." and in .03 additionally expressly states that this procedure relieves the Service only in part of control problems (and does not cover a situation where there is undue and unreasonable delay); and in .07 expressly states "....Cases involving form 872-A will receive the same priority handling and expeditious consideration as those involving

Regulation 301.6501(c)-1(d) under
exceptions

to general period of limitations on
assessments and collection provides:

" Extensions by Agreement. The time prescribed by Section 6501 for the assessment of any tax (other than the estate tax imposed by chapter 11 of the Code) may prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the district director or an assistant regional commissioner. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Does not the intent of parties become a relevant issue which should be brought to bear as well as the prior position of the Internal Revenue Service as evidence by their arguments in Court and by their Rules and Revenue Procedures?

Do not these considerations result in a question of fact requiring an evidentiary hearing?

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TO THE PRESIDENT OF THE UNIVERSITY

AND THE FACULTY

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Yours truly,
[Signature]

I am, Sir, very respectfully,
Yours truly,
[Signature]

Very truly,
[Signature]

The Treasury Department drafted form 872-A and had every opportunity to treat the issues raised by the government's prior positions and the McMANUS and PICTORIAL PRINTING CO. cases as well as all the other cases which have recited the general rule of construction that an agreement silent as to the time of performance does not run for an indefinite or unlimited time, but for a reasonable time only.

In HAINES -v- CITY of NEW YORK, 41 NY 2nd 769 (1977, the New York Court of Appeals held that the duration of an indefinite term will be implied based on the intent of the parties by implication and that in the absence of a clear expression of duration, the Courts will imply that the parties intended performance to continue for a reasonable time only. This rule was also stated in, among a long line of cases, including METAL ASSOCIATES,

INC. -v- EAST SIDE METAL SPINNING &
STAMPING CORP. (1947, CA2 NY) 165 F2d 163.

Appellants submit that the undisputed facts are sufficient for a Court to find that the Respondent acted in an arbitrary and capricious manner in the manner of handling the issuance of the notice of deficiency in the instant case. It is submitted that the equitable doctrine of estoppel is not precluded against an Agency of the Government by all the Court decisions and that there can be circumstances and facts which will give rise to invoking the principle of estoppel.

In MOSER -v- UNITED STATES, 341 U.S. 41 (1951) ; MOLTON, ALLEN & WILLIAMS, INC., -v-HARRIS, 613 F 2nd 1176, 1179 (D.C. Cir) 1980. the Courts have applied tests that would justify equitable estoppel in the instant case.

In the instant case the Internal Revenue Service in no shape or manner seeks to explain, excuse or justify the undue and unreasonable delay it created; without any acts the part of the Appellants contributing to the delay.

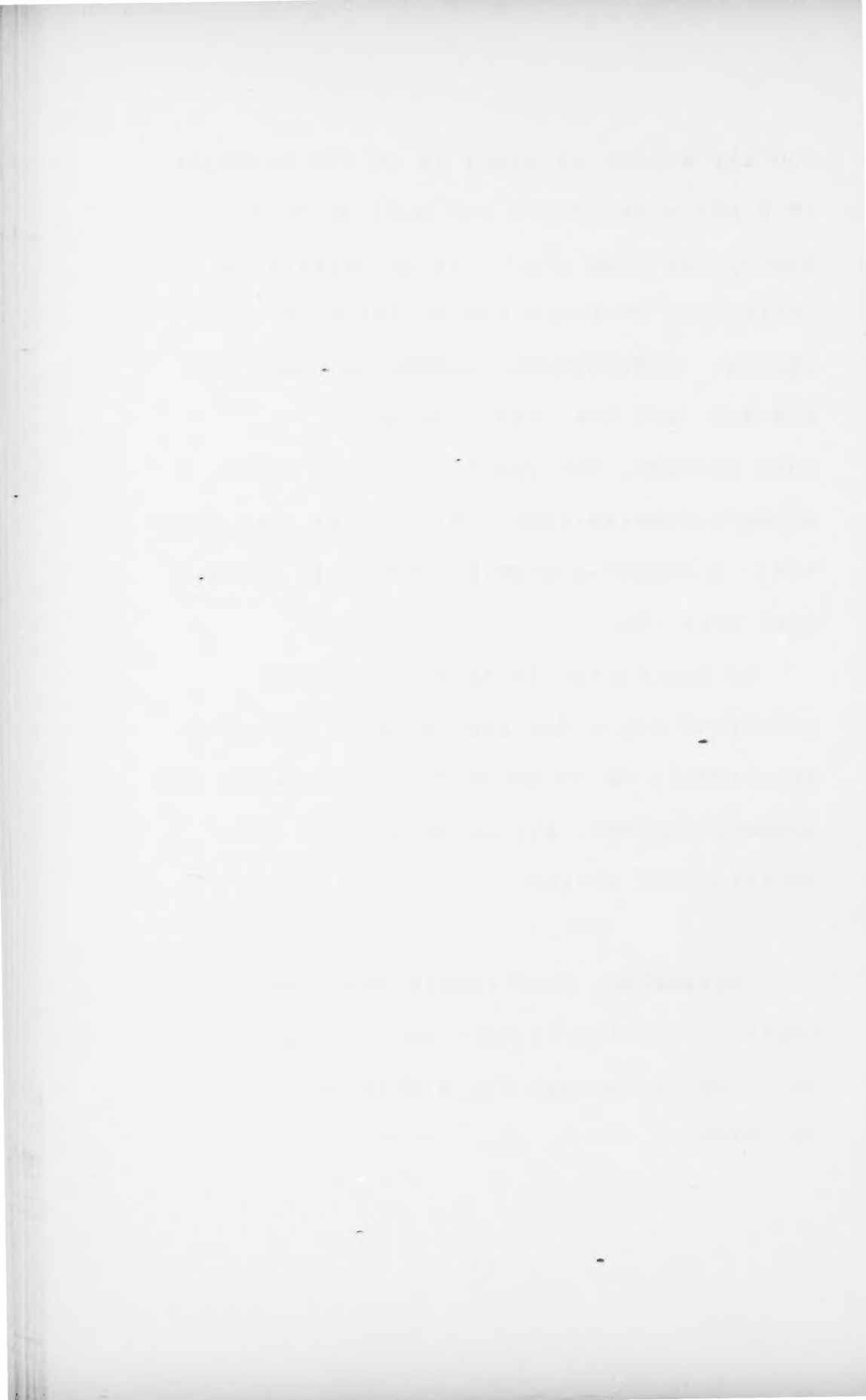
Appellants do not claim any rights of estoppel as to the audit period used by the Internal Revenue Service even though it could be argued the time taken was something other than expeditious or diligent. It is submitted that where the Internal Revenue Service can arguably claim it needed more time to complete a complex audit, it is totally different from the situation in the instant case where only a ministerial act remained to be done and no further information or meaningful activity was required to issue the statutory notice of deficiency. Where an agency has been Arbitrary and Capricious Even though the Courts apply a presumption of correctness



and the burden of proof is on the taxpayer in a tax case, where the actions of an agency has been arbitrary or capricious the Courts may overturn the decision of the agency. GREENSBORO -v-COMMISSIONER, 134 F2d 915 (9th Cir) 1943; COHEN-v-COMMISSIONER, 266 F2d 5 (9th Cir) 1959; WOLEH-v-COMMISSIONER, 297 F2d 309 (4th Cir) 1961; LLORENTE-v-COMMISSIONER, 649 F2d 152 (2nd Cir) 1981.

In Conclusion It Is Respectfully Submitted The Order and Decision appealed from should be reversed in all respects and Summary Judgment should be granted on Petitioners' Motion.

WHEREFORE, Petitioners pray that the Court review the instant case and grant Petitioners request for a Writ of Certiorari.



Dated: Buffalo, New York
September 24, 1990

Respectfully submitted

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1990

No.

RICHARD R. STENCLIK and DOLORES STENCLIK,

Petitioners-Appellants

- v -

COMMISSIONER OF INTERNAL REVENUE SERVICE,

Respondent-Appellee

APPENDIX.



IN THE SUPREME COURT OF THE UNITED STATES

October Term 1990

No.

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COMMISSIONER OF INTERNAL REVENUE SERVICE,

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APPENDIX

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Gary R. Allen, Richard Farber,
Tax Division, Department of
Justice, Washington, DC, of
Counsel), for Respondent-Appellee.

WALKER, Circuit Judge:

This appeal comes to us from a ruling by the United States Tax Court (Lawrence A. Wright, Judge) that the Internal Revenue Service ("IRS") was not time-barred from assessing in 1988 a deficiency in 1980 federal income taxes due from Richard R. and Dolores Stenclik ("taxpayers"). The sole issue before us is the timeliness of the statutory notice of the 1980 income tax deficiency that was sent to taxpayers in June, 1988. The taxpayers' primary argument is that, although they agreed to an open-ended extension of the limitations period in 1983, that period nonetheless expired by operation of law because the Commissioner of Internal Revenue ("Commissioner") waited an unreasonable length of time before attempting to assess the deficiency.

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Background

On April 15, 1981, the taxpayers filed a joint federal income tax return for the year 1980 claiming substantial capital loss deductions from their interests in several partnerships. On November 15, 1983, within the three-year period of limitations provided by 26 U.S.C. § 6501(a), the taxpayers and the District Director of Internal Revenue executed a Form 872-A captioned "Special Consent to Extend the Time to Assess Tax." Form 872-A indefinitely extended the three-year period within which the Commissioner could assess a tax deficiency subject to the occurrence of certain events, any of which would operate to terminate the extension in the instant case. The Form 872-A extension provided that the Commissioner could assess additional federal income taxes for the period ending December 31, 1980, on or before the 90th day after:

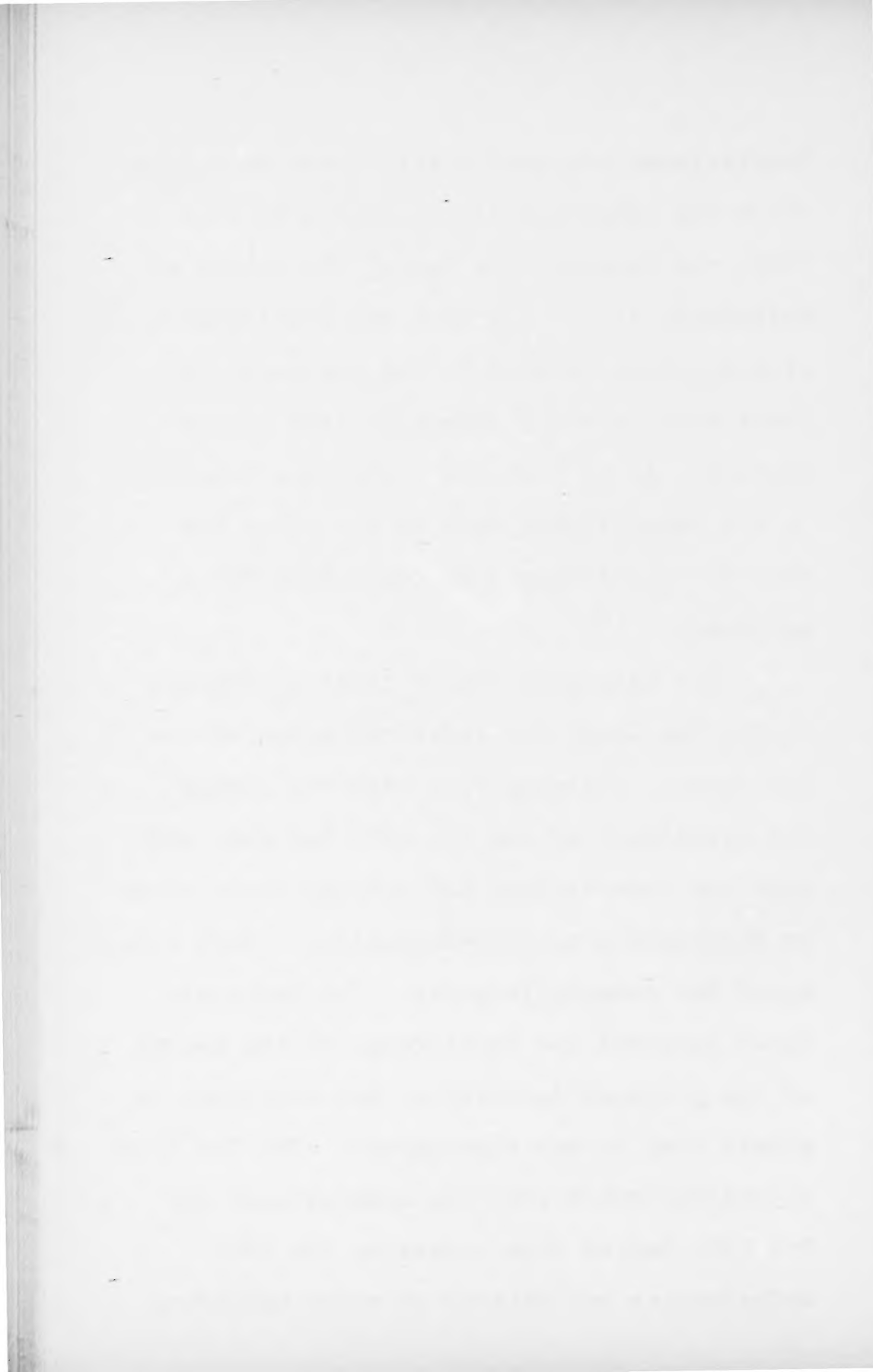
(a) the Internal Revenue Service office considering the case receives Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, from the taxpayer(s); or (b) the Internal Revenue Service mails Form 872-T to the taxpayer(s); or (c) the Internal Revenue Service mails a notice of deficiency for such period(s); except that if a notice of deficiency is sent to the taxpayer(s), the time for assessing the tax for the period(s) stated in the notice of deficiency will end 60 days after the period during which the making of an assessment was prohibited.

The Form 872-A further provided that the extension would terminate either on the expiration date set forth in the foregoing paragraph or on the date of an earlier assessment representing the IRS's final determination of tax due. The form also contained language particular to this case that limited the scope of any deficiency assessed to adjustments relating to certain specified partnerships.

In May, 1985, the IRS office examining the taxpayers' 1980 return received the last of the audit reports pertaining to the specified partnerships. In February, 1988, the

Commissioner proposed a settlement in a letter which the taxpayers disregarded. On June 23, 1988, the Commissioner issued the notice of deficiency of \$24,526 upon the disallowance of deductions related to two partnerships. There were no other communications between the parties. At no time did either the taxpayers or the Commissioner mail to the other the Form 872-T referenced in their Form 872-A agreement.

The taxpayers timely filed a petition in the Tax Court for redetermination of the deficiency, claiming both that the period for assessment of tax for 1980 had run, and that the Commissioner had substantively erred in disallowing certain deductions. Both sides moved for summary judgment. The taxpayers later conceded the correctness of the amount of the proposed deficiency, but continued to assert that it was time-barred. The Tax Court thereafter ruled that the Commissioner was not time-barred from assessing the 1980 deficiencies and entered an order upholding



the Commissioner's liability determination, from which this appeal was taken.

Discussion

Taxpayers' principal argument to this Court, as it was in the Tax Court, is that the Form 872-A extension agreement terminated by operation of law upon the expiration of a reasonable time after its execution. They contend that, notwithstanding the express termination provision in Form 872-A, which could have been but was not triggered by the taxpayers' mailing of Form 872-T, the limitations period extension was terminated by operation of law by the Commissioner's "unreasonable delay" of more than three years in issuing the deficiency notice, after he had obtained the relevant audit reports in May, 1985. The taxpayers argue that, without an enforceable 872-A extension, the Commissioner's assessment of tax deficiency is barred by the Internal Revenue Code's three-year statute of limitations. See 26

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U.S.C. §6501(a). We disagree.

Internal Revenue Code Section 6501(c)

(4) provides, in pertinent part:

Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title... both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

Form 872-A plainly constitutes such an agreed upon extension as contemplated by the statute, and taxpayers do not argue otherwise. The parties to such an extension are free to determine the terms of the extension, Pursell v. Commissioner, 38 T.C. 263, 278 (1962), aff'd per curiam, 315 F.2d 629 (3d Cir. 1963), and the fact that the extension granted by Form 872-A does not expire on a date certain does not undermine its validity under the Code. McManus v. Commissioner, 585 F.2d 443, 446 (9th Cir. 1978), cert. denied, 440 U.S. 959 (1979).

The Form 872-A extension, although of indefinite duration when executed, by its terms provides a procedure for its termina-

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tion. In addition to the IRS's mailing of a notice of deficiency or a final determination of tax due, either side, by filing a Form 872-T, can trigger a final ninety-day period within which the Commissioner must act. This procedure for terminating the extended limitations period has advantages for both the IRS and the taxpayer. It eliminates the administrative burden on the IRS of obtaining and monitoring successive fix-term waivers. It also avoids the possibility that a single indefinite waiver, with either no express termination procedures or only non-specific ones, will be deemed unreasonable by the courts, as well as the burden of litigation on that score. See, e.g., McManus v. Commissioner, 65 T.C. 197, 208 (1975), aff'd, 583 F.2d 443 (9th Cir. 1978); Pictorial Printing Co. v. Commissioner, 38 F.2d 563, 565 (7th Cir. 1930). The Form

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872-T procedure also benefits the taxpayer by allowing him to terminate the extension at will by giving notice, and by eliminating any uncertainty as to the form of such notice.

We see no reason to engraft onto the explicit termination mechanisms already in place a provision for termination of the extension after the passage of a "reasonable time". More than sixty years ago in Greylock Mills v. Commissioner, 31 F.2d 655 (2d Cir.), cert. denied, 280 U.S. 566 (1929), we rejected the argument that an indefinite extension should be construed to permit assessment only within a reasonable time after its execution where the taxpayer sat silent. We stated, "(i)f waivers which are in terms unlimited are to be limited at all, we think they should expire only after the taxpayer gives notice

27-7-1944
The first of the two
pages of the report
concerns the work of the
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to the Commissioner that he will regard the waiver as at an end after a reasonable time, say three or four months, from the day of such notice." Id. at 658. The current Form 872-A procedure is fully consistent with our decision in Greylock Mills.

Recent decisions of the Tenth Circuit and a unanimous Tax Court have similarly rejected the argument pressed by the taxpayers. See Wall v. Commissioner, 875 F.2d 812 (10th Cir. 1989); Estate of Camara v. Commissioner, 91 T.C. 957 (1988); see also Kinsey v. Commissioner, 859 F.2d 1361, 1362-64 (9th Cir. 1988), cert. denied, 109 S. Ct. 1540 (1989) (taxpayers' failure to respond to "30-day letter" from IRS does not trigger termination of Form 872-A, as such agreements generally terminate only by one of the specific means set forth in the form). We do not agree with the taxpayers that these cases are distinguishable on the ground that

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is not a new one. It is a movement
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none involved an unreasonable period of delay on its facts. Under the current Form 872-A procedure the length of delay is irrelevant since it is necessarily acquiesced in by the taxpayer who does not file the Form 872-T to bring the extension period to a close.

The taxpayers' reliance on McManus v. Commissioner, 583 F.2d 443, aff'd 65 T.C. 197, is misplaced. To be sure, the Ninth Circuit, although not asked to reach the issue, stated that the Tax Court had held that a Form 872-A agreement would be operative for a reasonable period only. 583 F.2d at 446. Both the Tenth Circuit has distinguished McManus on the ground that the Form 872-A at issue in that case was an earlier version that did not provide for the use of a specific termination mechanism such as the Form 872-T, but simply required the sending of "written notification" of termination. See Wall v. Commissioner, 875 F.2d at 813; see also Estate of Camara,

91 T.C. at 960-61 & n.5. Moreover, the idea of imposing a "reasonable" time limitation under the current Form 872-A is inconsistent with the Ninth Circuit's subsequent decision in Kinsey, supra, and the full Tax Court has since unanimously stated that to the extent its decision in McManus could be read as requiring a reasonable time limitation under the current Form 872-A, "we will no longer follow it." Estate of Camara, 91 T.C. at 962. The taxpayers also point to Pictorial Printing, 38 F.2d at 565, which suggested that an indefinite extension would be binding only for a reasonable period. But Pictorial Printing is inapposite since the extension document in that case did not by its terms provide the taxpayer with any means to terminate the agreement. Id. at 564. Finally, whatever the law in the Seventh

and Ninth Circuits, the rule in this circuit, since Greylock Mills v. Commissioner, supra, is that a long delay will not vitiate an indefinite extension absent notice from the taxpayer that he desires to bring the extension to a close.

The taxpayers also contend that because of the Commissioner's allegedly unreasonable and unjustifiable delay in issuing the notice of deficiency, he should be barred by the equitable doctrines of estoppel or laches from relying on the Form 872-A extension in this case. These claims are essentially the same as that previously discussed dressed up in equitable garb, and they fare no better. Such claims cannot be sustained in the face of the taxpayers' own failure to act as required by the Form 872-A procedure. Under this Form 872-A agreement with the taxpayers, the Commissioner was entitled to rely on the explicit terms of the agreement allowing him

to assess the tax up to ninety days following his receipt of Form 872-T from the taxpayers.

Finally, the taxpayers allege that it was never the intent of the parties that the extension agreement run for an indefinite period, or that the Commissioner somehow misled them regarding the duration of the extension. But the taxpayers have presented no evidence that they signed the Form 872-A -- with its clear termination procedures -- unwillingly or that both sides intended, or that they understood, anything other than what the plain words of their agreement stated.

The taxpayers cite state-law cases holding that if an agreement is silent as to duration, a court will presume that the parties intended it to run for a reasonable time only. But such cases are of no help to the taxpayers. With its explicit termination procedure, Form 872-A is hardly "silent" as to its duration. Rather, its

duration is expressly provided for and is as definite as the taxpayer needs it to be since he is empowered to commence a ninety-day termination period at any time by filing Form 872-T.

We hold that the Commissioner is not barred by the statute of limitations or other equitable doctrines from assessing the tax deficiency against the taxpayers. As we find taxpayers' other arguments to be without merit, the decision and order of the Tax Court is affirmed in all respects.

UNITED STATES TAX COURT

RICHARD R. STENCLIK AND DOLORES STENCLIK
Petitioners

-v-

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 24719-88 Filed September 25, 1989

Basil Tzetzso, for the petitioners

Jerome F. Warner, for the respondent.

MEMORANDUM OPINION

WRIGHT, Judge: This case is before the Court on the parties' cross-motions for summary judgment pursuant to Rule 121.¹ By notice of deficiency dated June 23, 1988, respondent determined a deficiency in petitioners' Federal income tax for the taxable year 1980 in the amount of \$24,526. Respondent also

¹ All Rule references are to the Tax Court Rules of Practice and Procedure. All section references are to the Internal Revenue Code of 1954, as amended and in effect for the years in issue.

T.C. No. 123-510

UNITED STATES TAX COURT

LEONARD J. STOKES, Appellant,
vs.
Commissioner of Internal Revenue, Respondent.

Decided May 12, 1954.

Rehearing denied June 1, 1954.

For petition to set aside decision of the Board of Tax Appeals, see 123 TC 123.

Case No. 123-510, 123 TC 123 (1954).
Case No. 123-510, 123 TC 123 (1954).

REVENUE RULING 54-100

Section 1014(b)(1). This section relates to the value of property acquired by a decedent's estate.

On the death of a decedent, the value of property acquired by the estate is determined as follows:

1. If the property is a capital asset, the value is the fair market value at the time of the decedent's death.

2. If the property is not a capital asset, the value is the fair market value at the time of the decedent's death.

3. If the property is a capital asset, the value is the fair market value at the time of the decedent's death.

4. If the property is not a capital asset, the value is the fair market value at the time of the decedent's death.

5. If the property is a capital asset, the value is the fair market value at the time of the decedent's death.

1. This ruling applies to the estate of a decedent who died after 1953. All estates of decedents who died after 1953 are subject to the provisions of this ruling. 2. This ruling applies to the estate of a decedent who died after 1953. All estates of decedents who died after 1953 are subject to the provisions of this ruling. 3. This ruling applies to the estate of a decedent who died after 1953. All estates of decedents who died after 1953 are subject to the provisions of this ruling.

determined that petitioners' underpayment of tax was a substantial underpayment attributable to tax-motivated transactions as defined by section 6621(c)(3). The sole issue for our decision is whether respondent's determination is barred by the period of limitations.

There is no dispute as to the facts of this case. The stipulation of facts, together with the exhibits attached thereto, is incorporated herein by this reference.

Petitioners are husband and wife and resided at Williamsville, New York, when they filed their petition. Petitioners filed their joint income tax return for the taxable year 1980 on April 15, 1981. On November 15, 1983, petitioners and respondent executed a Form 872-A (Special Consent to Extend the Time to Assess Tax).

Paragraph One of Form 872-A provides in part that the Federal income tax due for the year ended December 31, 1980;

may be assessed on or before the 90th (ninetieth) day after: (a) the Internal Revenue Service office considering the case receives Form 872-T, Notice of Termination of Special Consent to Extend the Time to Assess Tax, from taxpayer(s); or (b) the Internal Revenue Service mails Form 872-T to the taxpayer(s); or (c) the Internal Revenue Service mails a notice of deficiency for such period(s); except that if a notice of deficiency is sent to the taxpayer(s), the time for notice of deficiency will end 60 days after the period during which the making of an assessment was prohibited.* * *.

Paragraph Two of the executed Form 872-A further provides that: "This agreement ends on the earlier of the above expiration date or the assessment date of an increase in the above tax that reflects the final determination of tax in the final administrative appeals consideration." The executed Form 872-A

Reference is made to the letter of the 15th of January 1951.

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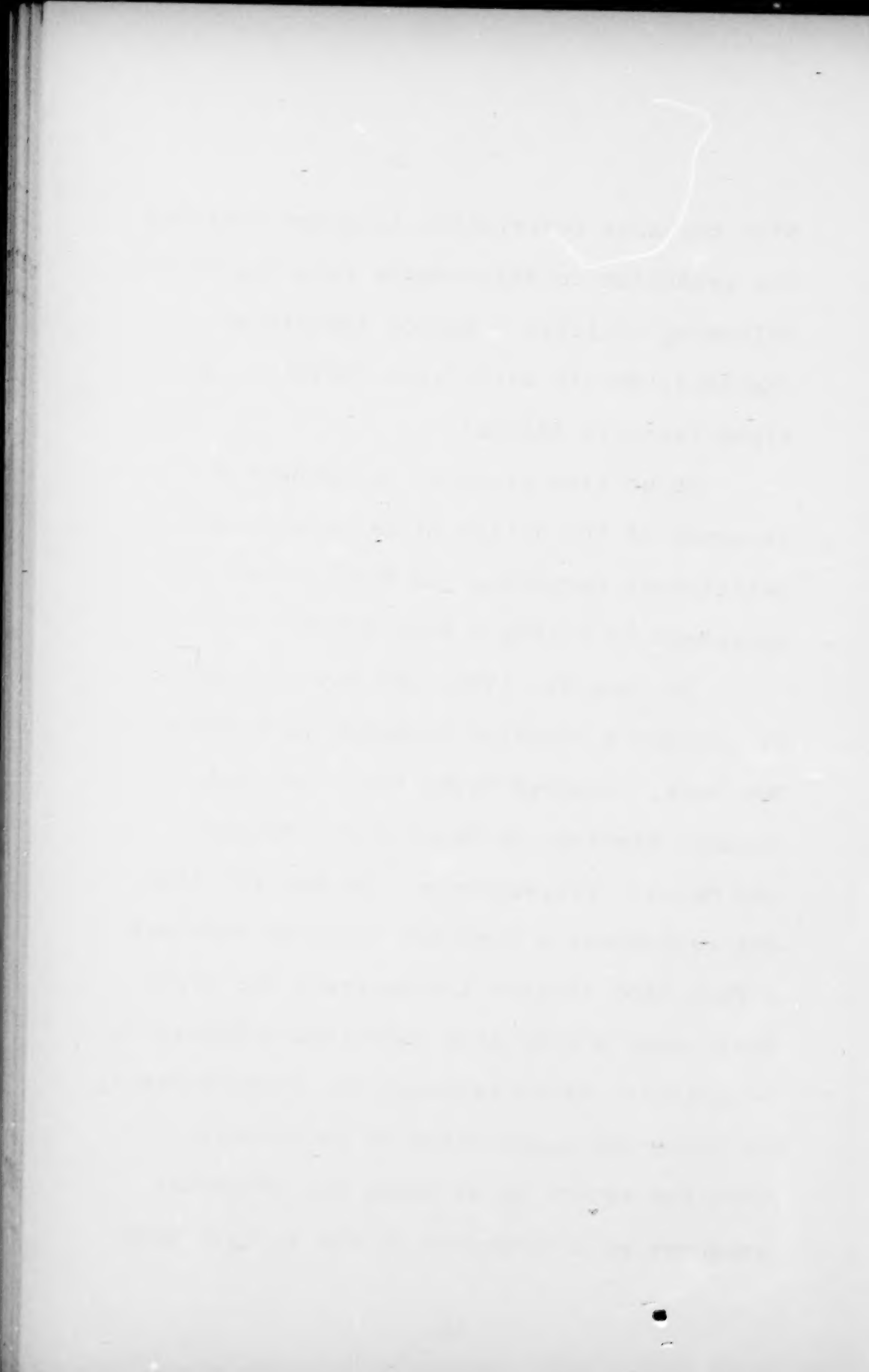
It is noted that the subject is under the name of the 15th of January 1951.

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also contains restrictive language limiting the extension to adjustments relating to the following entities: Matoon Associates (Matoon), Metals Associates (Metals), and Alpha Partners (Alpha).

At no time prior to respondent's issuance of the notice of deficiency did petitioners terminate the Form 872-A agreement by filing a Form 872-T.

On June 11, 1984, and May 23, 1985, respondent's District Director in Buffalo, New York, received Forms 6657 (Related Returns Examination Report) for Matoon and Metals, respectively. On May 28, 1985, the respondent's District Director received a Form 4665 (Report Transmittal) for Alpha. Respondent's file also contained a letter to petitioners dated February 10, 1988, offering to close the examination of petitioners' 1980 tax return by allowing out-of-pocket expenses as a deduction in the initial year



of petitioners' investments, Petitioners ignored this offer. Other than the examination reports and the out-of-pocket offer, respondent's files reflect no activity between respondent and petitioners until respondent issued the notice of deficiency. On June 23, 1988, respondent issued the statutory notice of deficiency based on increased income adjustments relating to petitioners' interests in Metals and Matoon.

Section 6501(a) generally provides that taxes imposed by the Internal Revenue Code must be assessed within three years from the time that the return is filed. There is no dispute that the notice of deficiency was not sent to petitioners within the normal 3-year period. Therefore, respondent's determination will be time-barred unless it falls within an exception to the general rule. One such exception is under section 6501(c)(4), which

provides that the period for assessment may be extended by agreement, so long as that agreement is executed before the period for assessment has expired.

Petitioners argue that respondent did not issue his notice of deficiency within a reasonable time after the execution of the Form 872-A and that therefore assessment of tax for 1980 is barred by the period of limitations. Respondent contends that the period of limitations was extended by agreement and that petitioners did not terminate the agreement prior to issuance of the notice of deficiency.

In a recent Court-reviewed opinion, we held that Form 872-A and the extension of the period for assessment obtained thereunder does not expire by operation of law after a reasonable time. Estate of Camara v. Commissioner, 91 T.C. 957 (1988). Petitioners have failed to distinguish their case from Estate

considered that the parties had agreed to
a period of adjustment, as long as that
was in accord with the spirit of the
the matter.

Participants agree that the matter is not
a case of failure of adjustment, which is
assessable. It is also the intention of the
SIA and the parties to the agreement of the
the fact as stated by the period of adjustment.

The matter concerns that the period of
adjustment was reached by agreement and that
participants did not intend the agreement
to be a failure of the matter of adjustment.

In a recent Court decision, the matter is
held that the SIA and the intention of the
period for adjustment should be taken into
the matter by operation of law after a

reasonable time. State of Ontario v. Canada
[1987] 1 S.C.R. 1023. Participants have
called to distinguish this case from State

of Camara v. Commissioner, supra. We also reject petitioners' other arguments as meritless. In accordance with the reasoning set forth in Estate of Camara v. Commissioner,² supra, we hold for respondent that the assessment is not barred by the period of limitations.

In light of the foregoing,

An appropriate order
will be issued.

2

We have previously addressed this identical issue with these same petitioners for taxable year 1979. See Stenclik v. Commissioner, T.C. Memo. 1989-19

of Canada's Constitution is also
in part parliamentary of the British type
and in structure with the responsible and
based on principle of democracy and
which we find in responsible form the
government is not based on the principle of
the law.

In light of the foregoing

it is very clear
that the law

to have any effect whatsoever on the law
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STATUTES

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 6501. LIMITATIONS ON ASSESSMENT
AND COLLECTION.

(a) General Rule. -- Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall begun after the expiration of such period.

* * * * *

(c) Exceptions. --

* * * * *

(4) Extension by Agreement. -- Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

* * * * *